

REMARKS

Claims 1-37 are pending in the application.

Improper Finality

On September 14, 2009, in response to Applicants' inquiry, the Examiner contacted the undersigned's offices to notify Applicants that the finality of the immediately preceding Office Action dated July 15, 2009, was indeed improper. Applicants agree with the Examiner that the finality was improper. Chapter 700 of the MPEP is on point in the instant case:

“...However, it would not be proper to make final a first Office action in a continuing or substitute application >or an RCE< where that application contains material which was presented in the earlier application after final rejection or closing of prosecution but was denied entry because (A) new issues were raised that required further consideration and/or search, or (B) the issue of new matter was raised.” MPEP 706.07(b)

As stated in the MPEP (cited above), it is not proper for the Office to issue a Final Rejection when entry of amendments was denied because “new issues were raised that required further consideration and/or search.” Indeed, the Examiner did not enter Applicants' amendments in the Response to Final Office Action, dated May 13, 2009, because, according to the Examiner, the amendments proposed by Applicants “changes claim scope and requires further consideration.” See Advisory Action, dated May 26, 2009.

As such, Applicants respectfully submit that the finality of the Office Action dated July 15, 2009, was in fact improper. Applicants respectfully request that the finality be withdrawn and a new, non-final action be issued, or in the alternative, a notice of allowance be issued based at least upon the arguments set forth below.

Claim Rejections – 35 U.S.C. 112

In the present Final Office Action, the Examiner maintained the rejection of claim 5 under 35 U.S.C. 112, first paragraph, as failing to particularly point out and distinctly claim the

subject matter regarded as the invention and as failing to comply with the written description requirement. Applicants respectfully traverse this rejection.

The Examiner argued that the language “the first remote system to generate a response” in claim 5 allegedly fails the written description requirement. Applicants respectfully direct the Examiner’s attention to the Specification, page 18, line 14, for support of this claimed feature:

In another embodiment, the client system 5 may select (at 334) a remote system 20 based on the information provided in the response(s). For example, if two remote systems 20 with fast processors respond, but one of the remote systems 20 has twice the memory as the other, then the client system 5 may select (at 334) the remote system 20 with a larger memory. In alternative embodiments, the client system 5 may select (at 334) the remote system 20 based on any other type of information provided in the response(s) by the remote systems 20, such as load level, operating system, or the like. In yet another embodiment, the client system 5 may select (at 334) the remote system 20 based on performance characteristics of the remote systems 20. That is, if desired, the client system 5 may maintain performance characteristics of the remote systems 20 based on the past assignments to select a particular remote system. Thus, for example, a remote system 20 having a track record of completing compilation task(s) **quicker than other remote systems** 20 may be selected over these other remote systems 20. The client system 5 may maintain the performance characteristics (e.g., compilation times) on a compilation project basis or on any other time interval or event basis. The delegating module 27 allows (at 340) the task to the remote system 20 that is selected (at 330) to perform the task. (Emphasis added). Spec., p.18, line 14, to p.19, line 5.

The Specification, as illustrated directly above, allows for selection of a remote system based upon **any other type of information provided in the response(s) by the remote systems 20.**

Those skilled in the art would understand that when the task was completed may be such a type of information. Additionally, the Specification allows for selection of a remote system based upon a track record of completing tasks **quicker** than other remote systems. Those skilled in the art would understand that various types of information provided in the response may be used for selection, and one of those types of information is whether tasks can be completed quicker than other remote system. Those skilled in the art would recognize that the remote system that

responds first may be capable of completing tasks “quicker and other remote systems.” For at least these reasons, the language “the first remote system to generate a response” found in claim 5 is fully supported by the Specification.

Applicants respectfully submit that claim 5 contains no vague or indefinite language. As for the Examiner's alleged inability to find any disclosure of "the first remote system to generate a response," in addition to the passage from the Specification cited above, the subject matter of a claim need not be described literally word-for-word (*i.e.*, using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement. MPEP 2163.02. The person of ordinary skill in the art would understand that generating a response by one or more of the remote systems is sufficiently disclosed by the teaching of receiving a response from the remote system. See, p. 9, lines 22-25; p. 11, lines 2-13; p. 16, lines 12-18; p. 17, lines 7-19; and p. 18, lines 1-7. In other words, a person of ordinary skill in the art would understand that a response received by a client must be generated by another system; claim 1 calls for receiving a response from a remote system, thus the response is generated by the remote system. Therefore, for at least these reasons, the requirements of 35 U.S.C. 112, first paragraph, are satisfied by the Specifications and the claims.

Therefore, Applicants request this rejection of claim 5 be withdrawn.

Claim Rejections – 35 U.S.C. 103(a)

Claims 1, 3-7, 9-15, 17-19, 28, 29 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,192,388 (**Cajole**) in view of US 2002/0169606 (**Bantz**) and further in view of ON. Applicants respectfully traverse this rejection.

Claims 35 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Cajole** in view of **Bantz**. Applicants respectfully traverse this rejection.

Claims 16, 30 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Cajolet-Bantz**, in view of US 2007/0011226 (**Hinni**). Applicants respectfully traverse this rejection.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Cajolet-Bantz-ON** as applied to claim 1 and further in view of US Pub. 2002/0087612 (**Harper**). Applicants respectfully traverse this rejection.

Claims 8 and 20-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Cajolet-Bantz-ON** as applied to claim 1, and further in view of **Harper** and **Hinni**. Applicants respectfully traverse this rejection.

Claims 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Cajolet** in view of US Pub. 2002/0007389 (**Jones**) further in view of **ON**. Applicants respectfully traverse this rejection.

For ease of discussion, claim 1 is discussed first. Claim 1 (as amended), directed to a method, comprises, *inter alia*, (1) indicating to two or more remote systems in a distributed system that a task in a task list is available for processing based on a distribution list; (2) receiving at least one response from at least two of the two or more remote systems capable of performing the task responsive to the indication; and (3) assigning the task from the task list to the remote system that responds first.

Applicants hereby incorporate herein by reference the arguments from the previous Response to Office Action (dated Feb. 6, 2009) and Response to Final Office Action (dated May 13, 2009).

The Examiner's rejection of claim 1 fails because **Cajolet**, **Bantz** and the *Official Notice*, either alone or in any combination, do not teach at least one of the claimed features. The

Examiner admits that *Cajole* at least does not disclose assigning the task from the task list to the remote system that responds first. While admitting that *Cajole* does not teach the claimed feature, the Examiner nevertheless argues that *Bantz* discloses this claimed feature. The Examiner's argument is problematic for several reasons. As an initial matter, the claim 1 calls for assigning the task to the system that is first to respond, and not simply to the workstation next in line in a queue, as the Examiner contends. In *Bantz*, the workstations do not respond at all to a request, as called for in claim 1. Claim 1 allows for the quickest responding remote system to take the next assigned task. In contrast, *Bantz* is agnostic with respect to response time. In other words, the workstation at the front of the queue in *Bantz* is selected even if a faster responding system is elsewhere in the queue.

Further, *Bantz* teaches a *single* workstation is available to take the next call in a call center. Only one workstation is available in *Bantz*, unlike the feature of amended claim 1 which calls for receiving a response from at least two remote devices. Having more than one available workstation is not described or suggested by *Bantz*. Further, if only one workstation can be assigned to the next call, *Bantz* cannot teach assigning the task to the system that is first to respond. The term "first" implies at least a "second" device, otherwise there would not a device that was first to respond. Accordingly, *Bantz* fails to support the proposition made by the Examiner, *i.e.*, *Bantz* fails to teach or make obvious the claimed feature of assigning the task to the system that is first to respond. Moreover, as admitted by the Examiner *Cajole* also fails to disclose or make obvious the claimed feature of assigning the task to the system that is first to respond.

Therefore, *Bantz* at least does not, and cannot, teach assigning the task from the task list to the remote system that responds first, as called for by claim 1 of the instant Application.

The Examiner's rejection is problematic for yet another fundamental reason: the proposed combination of **Cajolet** and **Bantz** teaches away from the claimed invention. It is well established that teaching away by the prior art constitutes *prima facie* evidence that the claimed invention is not obvious. *See, inter alia, In re Fine*, 5 U.S.P.Q.2d (BNA) 1596, 1599 (Fed. Cir. 1988); *In re Nielson*, 2 U.S.P.Q.2d (BNA) 1525, 1528 (Fed. Cir. 1987); *In re Hedges*, 228 U.S.P.Q. (BNA) 685, 687 (Fed. Cir. 1986). Moreover, it is also well established that where a modification or combination renders a prior art reference inoperable for its intended purpose, the reference teaches away from the modification or combination. *In re Gordon*, 221 U.S.P.Q. (BNA) 1125, 1127 (Fed. Cir. 1984). That is, if the proposed combination undermines the purpose of the prior art, it cannot be obvious. While in the Final Office Action, the Examiner alleges that **Cajolet** does not "avoid" assigning the task to the first remote system to respond, the Examiner does not take into account the fact that **Bantz** "avoids" assigning tasks between multiple available devices, as described in **Cajolet**. *See In re Fulton*, 391 F.3d 1195 (Fed. Cir. 2004) (as cited by the Examiner). In other words, the teachings in **Bantz** are structured such that only one workstation is available to take the next call, which teaches away from claim 1 (see above discussion that a plurality of remote stations would be required by claim 1). Thus, the combination of **Cajolet** and **Bantz** would at least render inoperable the 'next available FIFO' feature of **Bantz**. For at least these reasons, the combination of the cited references is not proper.

Moreover, **Cajolet** actually teaches away from the subject matter of claim 1. **Cajolet** teaches that a problem dispatcher receives indications that assistant computers are available to participate in a distributed processing session. In **Cajolet**, the task dispatcher then compares computational characteristics of the assistant computers and decides who will be assigned the different parts of the task. This is in contrast to the results provided by claim 1, which provide

that the client (“problem dispatcher,” according to the Examiner) not have to make any such decisions about which remote system (assistant computer, according to the Examiner) is assigned parts of the tasks. Claim 1 calls for assigning to the remote system that responds first. An exemplary benefit of claim 1 that is taught away by **Cajolet** relates to the fact that by assigning to the remote system that responds first, the decision making process may be eliminated from the client by essentially distributing the decision out to the remote systems. This may allow for less overhead and computing resources being used at the client system. Because **Cajolet** requires the task dispatcher to make the assignment decisions based upon comparisons of the responding assisting computers, and claim 1 requires no such decisions, **Cajolet** teaches away from claim 1. Those skilled in the art simply would not combine **Cajolet**, which teaches away from claim 1, with **Bantz** and modify their teaching in the manner claimed by claim 1; thus there is no *prima facie* case of obviousness of claim 1. *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1741 (2007).

The following arguments were presented in the Response to Office Action (dated Feb. 6, 2009) and the Response to Final Office Action (dated May 13, 2009), but were not addressed by the Examiner in the Final Office Action or the Advisory Action. Applicants respectfully request the following arguments be considered by the Examiner, or, in the alternative, that the claims be allowed based at least upon the following arguments.

The Examiner recognizes that **Cajolet** and **Bantz**, separately or together, further fail to teach compilation tasks. Non-Final Office Action (dated Sept. 2, 2008), p. 6. To make up for this shortcoming in **Cajolet** and **Bantz**, the Examiner takes *Official Notice* of two facts: that distributing compilation tasks was known, as per **Sundararajan**, US 6,487,577; and queuing techniques such as First In First Out were known. First, Applicants submit the *Official Notice* of

these two facts is inadequate. The Examiner's citation of *Sundararajan* to support the alleged common knowledge of distributing compilation tasks does not provide the person of ordinary skill in the art with any guidance as to whether the particular teachings of *Sundararajan* would be useful in the particular inventions as presently claimed. The Examiner's statement that certain queuing techniques were known does not provide the person of ordinary skill in the art with any guidance as to whether those particular queuing techniques would be useful in the particular inventions as presently claimed.

Regardless of whether the *Official Notice* was proper, however, the task distribution taught by *Sundararajan* focuses on use of jobshops published by subcontractor computers to determine which subcontractor computer is to perform the task. Col. 6, lines 1-18 and line 58 to col. 7, line 22; Figure 4. *Sundararajan* is silent regarding how a task is to be assigned if multiple subcontractor computers' jobshops indicate they are capable of performing the task. Further, *Sundararajan* teaches assigning a task to a subcontractor computer and then having the subcontractor computer determine whether it can perform the task or not. Col. 7, lines 1-12. Therefore, combining *Sundararajan* with *Cajolet* and *Bantz* fails to arrive at the presently claimed invention.

Even if the *Official Notice* that First In First Out (FIFO) was known is proper, First In First Out does not apply to the present claims. First In First Out means the earlier of two requests for a resource is the earlier one to be processed by that resource. The at least one response from the two or more remote systems is not a request for a resource, but a statement of the availability of the resource. In the Final Office Action, the Examiner argues that it would have been obvious to a person of skill in the art that “the system corresponding to the first response message (or the first available system) is to be assigned the task first.” See Final Office

Action, p.7. Applicants are unclear what the Examiner considers the “first response message” because there is no such teaching in a FIFO structure (*i.e.*, a request-response paradigm is **not** synonymous with a queuing/FIFO paradigm). Even assuming, as argued by the Examiner, that a “response” is sent by a computer in a FIFO/queue, the Examiner has not shown any evidence of what the “request” is in such a scenario. In fact, the Examiner has not offered any support for the argument that a FIFO queue is the same as a request-response based system, and this is not surprising because the two are in fact quite different. As such, the Examiner’s use of FIFO to teach the claimed feature of a remote system that responds first is improper. For similar reasons, the use of **Bantz** to teach this claimed feature is also improper.

Accordingly, for at least the aforementioned reasons, claim 1 and its dependent claims are allowable. Additionally, independent claims 10, 18, 19, 29 and 35, and their respective dependent claims, are also allowable for similar reasons claim 1 is allowable. Moreover, claim 32 is also allowable for similar reasons because it discloses processing a task assigned to the remote system, the remote system being first to respond to the indication from the client system for a given task.

The Examiner’s rejection of claim 2 fails because **Cajolet**, **Bantz**, the *Official Notice*, and **Harper**, either alone or in any combination, do not teach at least one of the claimed features. Applicants hereby incorporate the arguments set forth in the Response to Office Action (dated Feb. 6, 2009) herein. The Examiner admits that **Cajolet** and **Bantz** do not teach at least the claimed feature of “providing a message to a router”, but the Examiner argues that **Harper** teaches this feature in Fig. 2. *See* Final Office Action, p.20-21. Specifically, the Examiner argues that Fig. 2 shows a gateway (router, according to the Examiner) connected to a dispatcher (client device, according to the Examiner) for transmitting task assignments to servers (remote

devices, according to the Examiner). *Id.* The Examiner also argues that the dispatcher and the gateway may be the same device. *Id.* Even if this is true, the Examiner's position is still problematic because claim 2 calls for providing a message to a router which, in response, transmits at least a portion of the message to a remote device. Under the Examiner's interpretation, the dispatcher/gateway would provide a message *to itself*, and in response to providing the message *to itself*, the dispatcher/gateway would then transmit at least part of the message to the servers. Because claim 2 calls for providing a message to a router and, in response, transmitting from the router, the Examiner's position that the dispatcher and gateway in *Harper* can be one device is not applicable to claim 2, even if true.

Accordingly, for at least the aforementioned reasons, claim 2 is allowable. Moreover, with respect to claims 8 and 20, *Hinni* fails to cure the deficiencies of *Cajolet*, *Bantz*, the *Official Notice*, and *Harper*. Therefore, claims 8 and 20, and the claims depending from claim 20, are also allowable for similar reasons.

The Examiner's rejection of claim 32 fails because *Cajolet*, *Jones* and the *Official Notice*, either alone or in any combination, do not teach at least one of the claimed features. For example, claim 32 calls for reserving one or more resources of the remote system in response to determining that the remote system is capable of processing the at least one of the compilation task. According to the Examiner, *Jones* allegedly teaches reserving a resource after determining the amount of the resource needed for a requested task. However, *Jones* teaches that an activity determines what resources it needs, then the activity sends a request to a resource planner to grant the resources, which the resource planner **may grant or withhold**. See *Jones*, ¶¶ 0034, 0040, 0043 (emphasis added). Put another way, the activity in *Jones* must request resources before it can reserve resources; the activity does not know if the resources are available until

after they are requested and granted (and the resources may or may not be granted). *Jones* teaches the activity reserves resources *prior* to determining that the resources are available for the activity. *See id.* at ¶ 0043. *Jones* also describes that if the resources are not available, the activity terminates. *See id.* at ¶ 0043. As such, *Jones* does not reserve resources in response to determining, as called for in claim 32. The teaching in *Jones* is contrary to claim 32 and all claims dependent thereon, which recite the step of reserving one or more resources of a remote system in response to determining that the remote system is capable of processing a compilation task. *Jones* also fails to supplement the deficiencies of *Cajolet* and *ON* discussed above. Therefore, claims 32-34 are patentable over these references.

Conclusion

Reconsideration of the present application is respectfully requested.

In light of the arguments presented above, a Notice of Allowance is respectfully solicited. If for any reason the Examiner finds the application other than in condition for allowance, **the Examiner is requested to call the undersigned attorney** at the Houston, Texas telephone number (713) 934-4069 to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,

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